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In the Supreme Court
of the United States

OCTOBER TERM, 1965

No. 807

INTERSTATE COMMERCE COMMISSION,
Petitioner,

v.

NORTHWEST AGRICULTURAL COOPERATIVE ASSOCIATION, INC.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF FOR NORTHWEST AGRICULTURAL ASSOCIATION, INC. IN OPPOSITION

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JURISDICTION

The judgment of the court of appeals was entered on August 10, 1965. No petition for rehearing was filed. An order was entered extending the time in which to petition for a writ of certiorari to and including December 8, 1965. The petition for a writ of certiorari was filed on

December 8, 1965. The jurisdiction of this court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a bona fide agricultural cooperative can engage in incidental nonfarm, nonmember business to the extent that is reasonably necessary to effect the statutory purposes of the Agricultural Marketing Act.

STATUTES INVOLVED

The relevant portions of the Agricultural Marketing Act provide as follows:

12 U.S.C. Section 1141(a):

> "(a) It is declared to be the policy of Congress to promote the effective merchandising of agricultural commodities in interstate and foreign commerce so that the industry of agriculture will be placed on a basis of economic equality with other industries, and to that end to protect, control, and stabilize the currents of interstate and foreign commerce in the marketing of agricultural commodities and their food products—
>
> "(1) by minimizing speculation.
>
> "(2) by preventing inefficient and wasteful methods of distribution.
>
> "(3) by encouraging the organization of producers into effective associations or corporations under their own control for greater unity of effort in marketing and by promoting the establishment and financing of a farm marketing system of producer-owned and producer-controlled cooperative associations and other agencies.

"(4) by aiding in preventing and controlling surpluses in any agricultural commodity, through orderly production and distribution, so as to maintain advantageous domestic markets and prevent such surpluses from causing undue and excessive fluctuations or depressions in prices for the commodity."

12 U.S.C. Section 1141j(a):

"(a) As used in this subchapter, the term 'cooperative association' means any association in which farmers act together in processing, preparing for market, handling, and/or marketing the farm products of persons so engaged, and also means any association in which farmers act together in purchasing, testing, grading, processing, distributing, and/or furnishing farm supplies and/or farm business services: *Provided, however,* That such associations are operated for the mutual benefit of the members thereof as such producers or purchasers and conform to one or both of the following requirements:

"First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; and

"Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

"And in any case to the following:

"Third. That the association shall not deal in farm products, farm supplies, and farm business services with or for nonmembers in an amount greater in value than the total amount of such busi-

ness transacted by it with or for members. All business transacted by any cooperative association for or on behalf of the United States or any agency or instrumentality thereof shall be disregarded in determining the volume of member and nonmember business transacted by such assoeation."

The pertinent provision of the Interstate Commerce Act as amended provides:

49 U.S.C. Section 303(b)(5):

"(b) Nothing in this chapter, except the provisions of section 304 of this title relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include * * * (5) motor vehicles controlled and operated by a cooperative association as defined in the Agricultural Marketing Act, approved June 15, 1929, as amended, or by a federation of such cooperative associations, if such federation possesses no greater powers or purposes than cooperative associations so defined."

ARGUMENT

Contrary to the statement contained in the petition for writ of certiorari, the question of whether an agricultural cooperative can deal in nonfarm goods for nonmembers has been presented to another court of appeals. In *ICC* v. *Jamestown Farmers U F Co-op T A* (C.C.A. 8, 1945), 151 F.2d 403, the court held that such activities as are incidental and reasonably necessary to the primary purposes of the cooperative are permissible. There are no court decisions to the contrary. The decision of the Court of Appeals for the Ninth Circuit

herein is in conformity with the *Jamestown* decision. Accordingly, there is no conflict of opinions between the courts.

As the Solicitor General points out in his petition, the only conflict involved here is the unwillingness of the Interstate Commerce Commission to accept the interpretation of the Agricultural Marketing Act made by the Eighth Circuit Court of Appeals in *Jamestown* and reiterated by the Ninth Circuit here.

The Commission first attempted to avoid the effect of *Jamestown* by seeking legislation amending Section 204 (a) of the Interstate Commerce Act to provide the regulatory powers it seeks to have the court impose (78th Annual Report of the Interstate Commerce Commission, p. 77). Congress has consistently refused to take action on such legislation.

It is agreed that Northwest Agricultural Cooperative Association, Inc., is a bona fide cooperative organized under the Idaho Cooperative Marketing Association Act for the use and benefit of its farmer members. Whether or not such an agricultural cooperative *should* be exempt from the certification provisions of the Interstate Commerce Act is a policy decision for the legislative branch. Proponents of the Commission's position have repeatedly failed in attempts to either eliminate or in any way modify the cooperative exemption in Section 203(b)(5) from the time that portion of the Act was first passed in 1935 through the last session of Congress (79th Congressional Record, p. 12218 (1935); 78th Annual Report of the Interstate Commerce Commission, p. 77). The

fact that this case involves a collision between *policies* of two agencies within the executive branch, as pointed out by the Solicitor General, does not justify the court's intervention to establish for the commission what it claims its regulatory powers to be. As the court of appeals observed:

> "If the reach of the Agricultural Marketing Act is to be narrowed to serve the policies underlying the Interstate Commerce Act at the expense of those upon which the Agricultural Marketing Act is based, the readjustment must be made by Congress. And Congress, it may be pertinent to note, has repeatedly rejected past efforts to induce it to alter the present balance." (Northwest Agricultural Cooperative Association, Inc. v. ICC (9 Cir, 1965) 350 F2d 252, 257)

The Solicitor General's main concern about the decision below, however, appears not to be that it raises a significant legal problem in need of resolution, but rather the potential economic impact the decision might have upon regulated carriers. This also is a matter more properly left to the policy-making discretion of the legislative branch. However, even assuming the possible economic result of the decision is a legitimate concern of the court, the figures cited by the Solicitor General belie the claim that the questioned activities of cooperatives could have much of a relative "impact" upon the activities of regulated carriers. According to the statistics cited on page 14 of the Petition, the revenue received by farmers from the backhaul activities of their cooperatives would constitute less than .0001 percent of the revenue of regulated carriers.

As found by both the trial court and the Court of Appeals, this revenue is essential to Northwest to effectuate the stated policy of the Agricultural Marketing Act by placing its farmer members on a basis of economic equality and preventing inefficient and wasteful methods of distribution. It does not seem likely that receipt of such revenue by the farmer members of Northwest Agricultural Cooperative Association, Inc., will disrupt the regulated-carrier industry.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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